

**THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION**

**Civil Action No. 5-11-CV-00353-H**

**MUHAMMED BAZZI,**

**Plaintiff,**

**v.**

**PA NDERRY M’BAI, FREEDOM  
NEWSPAPER, INC., and JOHN DOE**

**Defendants.**

**DEFENDANTS PA NDERRY M’BAI  
AND FREEDOM NEWSPAPER, INC.’S  
REPLY TO COURT ORDER  
TO SHOW CAUSE**

Defendants, Pa Nderry M’Bai and Freedom Newspaper, Inc., respectfully submit this reply to Plaintiff’s Response To Court Order To Show Cause [D.E. 22].

Bazzi misconstrues the law in arguing that attorney’s fees and expenses cannot be awarded in the absence of harm. Plaintiff’s Response at 3. Bazzi’s reliance on *Carr v. Deeds*, 453 F.3d 593 (4<sup>th</sup> Cir.), is misplaced. *Carr* involved the exclusion of an expert witness who had failed to disclose the written report required by Rule 26(a)(2)(B). The court considered whether that failure was harmless because Rule 37(c)(1) says a court may not exclude a witness for failure to make a disclosure if the failure was “harmless.” The Court’s Order here has nothing to do with exclusion and Rule 37(c)(1) does not apply.

Instead, as the Court noted in its Order, Rule 37(a)(5) is the applicable standard. Order [D.E. 22 at 3]. It applies where the relief sought is monetary – reasonable expenses and attorney’s fees. It contains no “harmless” exception. And it is ignored by Bazzi, who has

offered no conceivably pertinent justification for his failure to make his disclosures in a timely manner or promptly after being requested to do so by counsel for M'Bai and Freedom Newspaper.

In any event, Bazzi's conduct is not "harmless." There is inherent harm to the judicial process when a litigant fails without justification to comply with a court order. There is harm too when defendants, such as M'Bai and Freedom Newspaper, have to fight to obtain information they should have received in the opening weeks of discovery. The relief sought here is measured and mandated by Rule 37(a)(5).

Dated this 5<sup>th</sup> day of April, 2013.

HUNTON & WILLIAMS LLP

/s/ Douglas W. Kenyon  
Douglas W. Kenyon (dkenyon@hunton.com)  
N.C. State Bar No. 13242  
R. Dennis Fairbanks ([dfairbanks@hunton.com](mailto:dfairbanks@hunton.com))  
N.C. State Bar No.: 33572  
HUNTON & WILLIAMS LLP  
Post Office Box 109  
Raleigh, North Carolina 27602  
Telephone: 919.899.3000  
Facsimile: 919.833.6352

*Counsel for Defendants Pa Nderry M'Bai and  
Freedom Newspaper, Inc.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of **DEFENDANTS PA NDERRY M'BAI AND FREEDOM NEWSPAPER, INC.'S REPLY TO COURT ORDER TO SHOW CAUSE** has been served today via electronic mail and U.S. Mail to the person at the address below:

Edward H. Maginnis  
Maginnis Law, PLLC  
19 West Hargett Street, Suite 906  
Raleigh, NC 27601  
Telephone: 919.526.0450  
Facsimile: 919.882.8763.  
[emaginnis@maginnislaw.com](mailto:emaginnis@maginnislaw.com))

This the 5th day of April, 2013.

/s/ Douglas W. Kenyon  
HUNTON & WILLIAMS LLP  
421 Fayetteville Street, Suite 1400  
Raleigh, N.C. 27601  
*Counsel for Defendants Pa Nderry M'Bai and  
Freedom Newspapers, Inc.*